

23809343

Regina Alcomendras
Santa Clara County - Clerk-Recorder

11/21/2017 09:58 AM

RECORDING REQUESTED BY:
King Plaza, LLC
4546 El Camino Real #222
Los Altos, California 94022

Titles: 1 Pages: 17

Fees: \$73.00
Taxes: \$0
Total: \$73.00



WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710
Attention: Mark Piros, Unit Chief
Brownfields and Environmental
Restoration Program

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**LAND USE COVENANT AND AGREEMENT
ENVIRONMENTAL RESTRICTIONS**

County of Santa Clara, Assessor Parcel Number: 670-02-025
Queen Cleaners
Department Site Code 202008

This Land Use Covenant and Agreement ("Covenant") is made by and between King Plaza, LLC (the "Covenantor"), the current owner of property located at 2511 South King Road, in the County of Santa Clara, State of California (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and the Department hereby agree that, pursuant to Civil Code section 1471 and Health and Safety Code section 25355.5, the use of the Property be restricted as set forth in this Covenant and that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.1. Property Location. The Property that is subject to this Covenant, totaling approximately 5,060 square feet, is more particularly described in the attached Exhibit A, "Legal Description", and depicted in Exhibit B, Easement Plat. The Property is a portion of County of Santa Clara, Assessor Parcel Number 670-02-025, which is located in the area now generally bounded by Burdette Drive to the northwest, King Road to the northeast, and commercial properties to the southwest and southeast and the layout of the Property is depicted in Exhibit C.

1.2. Remediation of Property. This Property has been investigated and/or remediated under the Department's oversight. The Department approved a Preliminary Endangerment Assessment (PEA) report and a PEA Addendum in accordance with Health and Safety Code, division 20, chapter 6.8. Hazardous substances in soil gas, including tetrachloroethylene (PCE) at 8,800 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), trichloroethylene (TCE) at 1,200 $\mu\text{g}/\text{m}^3$, cis-1,2-dichloroethylene (cis-1,2-DCE) at 820 $\mu\text{g}/\text{m}^3$, and vinyl chloride at 21 $\mu\text{g}/\text{m}^3$, remain at the Property above levels acceptable for unrestricted land use.

1.3. Basis for Environmental Restrictions. As a result of the presence of PCE, TCE, cis-1,2-DCE, and vinyl chloride, which are also hazardous materials as defined in Health and Safety Code section 25260, at the Property, the Department has concluded that it is reasonably necessary to restrict the use of the Property in order to protect present or future human health or safety or the environment, and that this Covenant is required as specified by the Department-approved PEA report and PEA Addendum for the Property. The Department has also concluded that the Property, when used in compliance with the Environmental Restrictions of this Covenant, does not present an unacceptable risk to present and future human health or safety or the environment.

ARTICLE II
DEFINITIONS

2.1. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.2. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, requirements, prohibitions, and terms and conditions as set forth in this Covenant.

2.3. Improvements. "Improvements" includes, but is not limited to buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.4. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.5. Occupant. "Occupant" or "Occupants" means Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.6. Owner. "Owner" or "Owners" means the Covenantor, and any successor in interest including any heir and assignee, who at any time holds title to all or any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.1. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Civil Code section 1471 and Health and Safety Code section 25355.5 (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.2. Binding upon Owners/Occupants. This Covenant: (a) binds all Owners of the Property, their heirs, successors, and assignees; and (b) the agents, employees, and lessees of the Owners and the Owners' heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive Owners of the Property are expressly bound hereby for the benefit of the Department; this Covenant, however, is binding on all Owners and Occupants, and their respective successors and assignees, only during their respective periods of ownership or occupancy except that such Owners or Occupants shall continue to be liable for any violations of, or non-compliance with,

the Environmental Restrictions of this Covenant or any acts or omissions during their ownership or occupancy.

3.3. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.4. Conveyance of Property. The Owner and new Owner shall provide Notice to the Department not later than 30 calendar days after any conveyance or receipt of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The Notice shall include the name and mailing address of the new Owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number(s) noted on page one. If the new Owner's property has been assigned a different Assessor Parcel Number, each such Assessor Parcel Number that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.5. Costs of Administering the Covenant to Be Paid by Owner. The Department has already incurred and will in the future incur costs associated with this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering, implementing and enforcing this Covenant.

ARTICLE IV

RESTRICTIONS AND REQUIREMENTS

4.1. Prohibited Uses. The Property shall not be used for any of the following purposes without prior written approval by the Department:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 18 years of age.

(d) A day care center for children.

4.2. Soil Management. Soil management activities at the Property are subject to the following requirements in addition to any other applicable Environmental Restrictions:

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed at the Property without a Soil Management Plan pre-approved by the Department in writing.
- (b) Any soil brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

4.3. Prohibited Activities. The following activity shall not be conducted at the Property:

- (a) Construction of a new building or buildings at the Property without prior DTSC approval. DTSC approval will be based on an evaluation of the conditions at the time a new building or buildings is proposed and may require additional investigation or engineering controls (e.g., vapor barriers).

4.4. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, investigation, remediation, monitoring, and other activities as deemed necessary by the Department in order to protect human health or safety or the environment.

4.5. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the operation and maintenance activities, if any, shall have reasonable right of entry and access to the Property for the purpose of implementing such operation and maintenance activities until the Department determines that no further operation and maintenance activity is required.

4.6. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant and shall submit an annual inspection report to the Department for its approval by **January 15th** of each year. The annual inspection report must include the dates, times, and names of

those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations that were the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk in, etc.). If any violation is noted, the annual inspection report must detail the steps taken to correct the violation and return to compliance. If the Owner identifies any violations of this Covenant during the annual inspection or at any other time, the Owner must within 10 calendar days of identifying the violation: (a) determine the identity of the party in violation; (b) send a letter advising the party of the violation of the Covenant; and (c) demand that the violation cease immediately. Additionally, a copy of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 calendar days of its original transmission.

4.7 Five-Year Review. In addition to the annual reviews noted above, after a period of five (5) years from the date of recordation of the Covenant and every five (5) years thereafter, Owner shall submit a Five-Year Review report documenting its review of the remedy implemented and its evaluation to determine if human health and the environment are being adequately protected by the remedy as implemented. The report shall describe the results of all inspections, sampling analyses, tests and other data generated or received by Owner and evaluate the adequacy of the implemented remedy in protecting human health and the environment. As a result of any review work performed, DTSC may require Owner to perform additional review work or modify the review work previously performed by Owner.

ARTICLE V ENFORCEMENT

5.1. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, such as failure to submit (including submission of any false statement) record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI

VARIANCE, REMOVAL AND TERM

6.1. Variance from Environmental Restrictions. Any person may apply to the Department for a written variance from any of the Environmental Restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25223.

6.2 Removal of Environmental Restrictions. Any person may apply to the Department to remove any of the Environmental Restrictions imposed by this Covenant or terminate the Covenant in its entirety. Such application shall be made in accordance with Health and Safety Code section 25224.

6.3 Term. Unless ended in accordance with paragraph 6.2, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.1. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof, to the general public or anyone else for any purpose whatsoever.

7.2. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within 10 calendar days of the Covenantor's receipt of a fully executed original.

7.3. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (a) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (b) five calendar days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: King Plaza, LLC
 4546 El Camino Real #222
 Los Altos, California 94022

And

To Department: Mark Piros, P.E., Unit Chief
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710

Any party may change its address or the individual to whose attention a Notice is to be sent by giving advance written Notice in compliance with this paragraph.

7.4. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.5. Statutory References. All statutory or regulatory references include successor provisions.

7.6. Incorporation of Exhibits. All exhibits and attachments to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Covenantor and the Department hereby execute this Covenant.

Covenantor: King Plaza, LLC

By: Albert Wang
Albert Wang

Date: 10/30/17

Department of Toxic Substances Control:

By: Mark Piros
Mark Piros, P.E.
Unit Chief
Brownfields and Environmental Restoration Program

Date: 11/6/2017

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of **STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

On 30th October 2017 before me,

Doug Shon, Notary public
(space above this line is for name and title of the officer/notary),

personally appeared ALBERT WANG, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

[Handwritten Signature] (seal)
Signature of Notary Public



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ALAMEDA

On November 06, 2017 before me,

Nicole Thuemmler, Notary Public

(space above this line is for name and title of the officer/notary),

personally appeared MARK PIROS, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Nicole Thuemmler (seal)

Signature of Notary Public

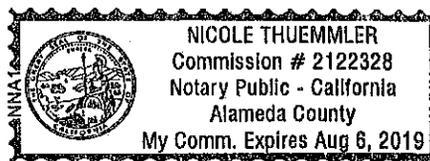


Exhibit A

Property Legal Description

EXHIBIT "A"

Legal Description for Deed Restriction

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

A portion of Parcel "A", as shown upon that certain Parcel Map filed October 17, 1973 in Book 331 of Maps, at Page 31, Santa Clara County Records, more particularly described as follows:

Beginning at the westernmost corner of said Parcel "A" (331 Maps 31); thence along the southwesterly line, South 37° 00' 00" East 49.84 feet, to the True Point of Beginning; thence leaving said line North 53° 00' 00" East 88.00 feet; thence, South 37° 00' 00" East 57.50 feet; thence, South 53° 00' 00" West 88.00 feet, to said southwesterly line of said Parcel; thence, along said line, North 37° 00' 00" West 57.50 feet, to the True Point of Beginning.

Containing an area of 5,060 square feet, more or less.

A plat (Exhibit "B") showing the above described property is attached hereto and made a part hereof.

End of Description

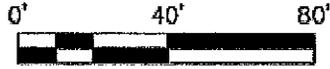
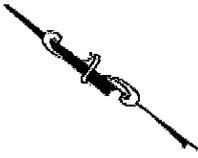


Virgil D. Chavez
Virgil D. Chavez, PLS 6323

Exhibit B

Easement Plat

EXHIBIT "B"
 EASEMENT PLAT TO ACCOMPANY
 LEGAL DESCRIPTION
 2511 SOUTH KING ROAD
 SAN JOSE, CA



SCALE 1"=40'

KING ROAD

S 37°00'00" E 270.16'

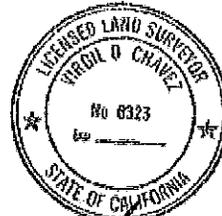
R=20'
 L=32.49'
 D=93°06'16"

PARCEL "A"
 331 MAPS 31

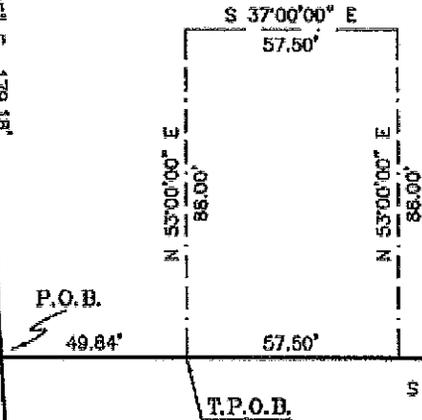
BURDETTE DRIVE

N 49°54'45" E 179.18'

N 49°54'45" E 200.25'



Virgil Chavez



P.O.B.
 49.84'

T.P.O.B.

S 37°00'00" E 291.27'

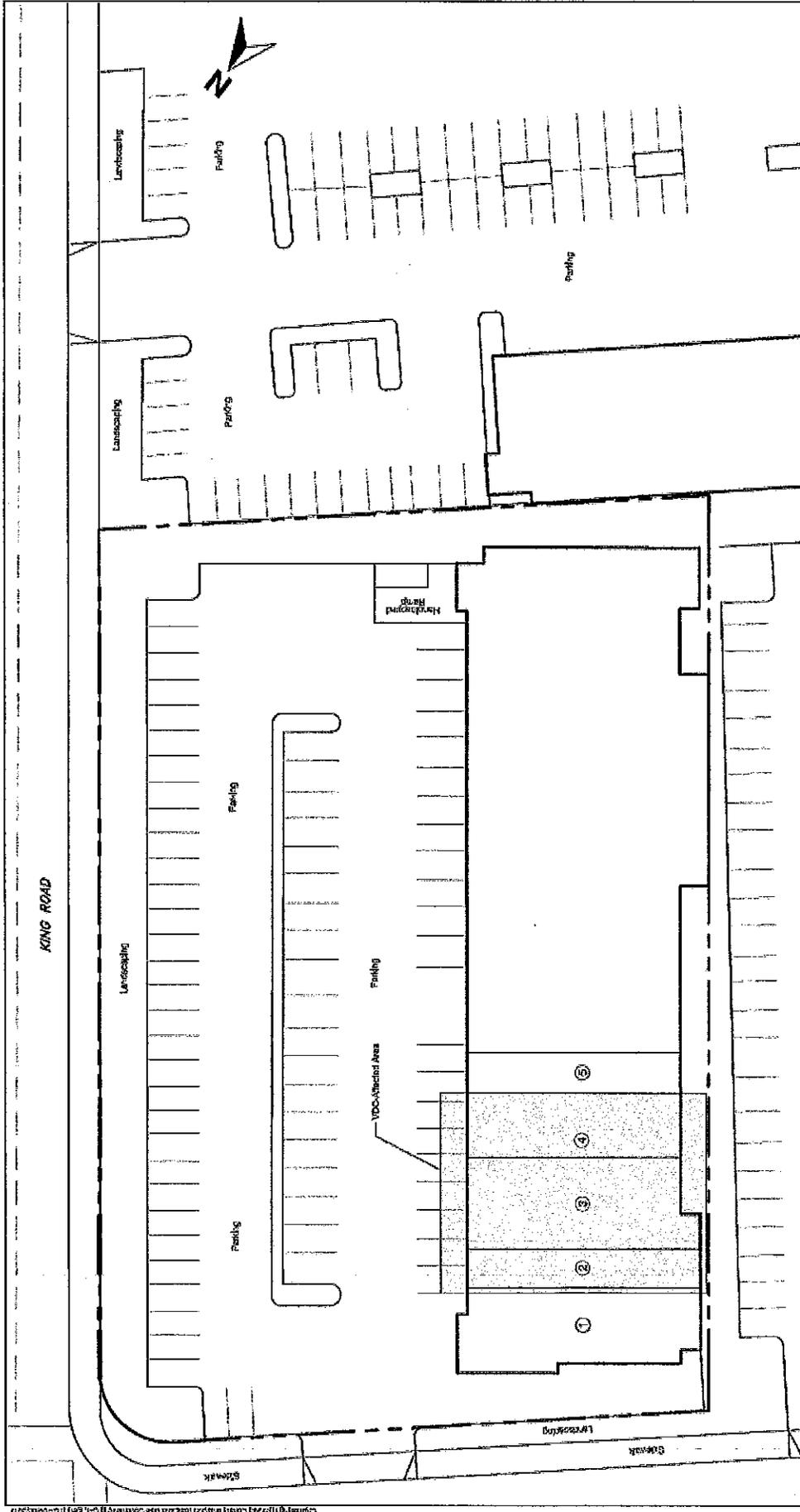
VIRGIL CHAVEZ LAND SURVEYING
 721 TUOLUMNE STREET
 VALLEJO, CALIFORNIA
 (707) 653-2476

DRAWING NO. 3527.02

JUNE, 2017 SCALE: 1"= 40' SHEET 1 OF 1

Exhibit C

Overall Site Plan



LEGEND

Property Boundary

BUSINESS NAMES

- ① Stop N' Shop (Convenience Store)
2877 South King Road
- ② 7-Eleven Photo
2888 South King Road
- ③ Queen Cleaners
2811 South King Road
- ④ Hit and Run Super
2818 South King Road
- ⑤ Queen Cleaners
2818 South King Road

APPROXIMATE SCALE
1" = 100'

AEI Consultants
San Jose, California

EXHIBIT C

Queen Cleaners
2511 South King Road
San Jose, California

FIGURE C-1
Project No. 323165

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